

STATE OF MICHIGAN
COURT OF APPEALS

YORKTOWNE, INC.,

Plaintiff-Appellee,

v

E.W. KITCHEN DISTRIBUTORS, INC.,

Defendant,

and

RICE, RICE AND GILBERT, P.C.,

Appellant.

UNPUBLISHED

February 12, 1999

No. 205703

Oakland Circuit Court

LC No. 92-438587 CK

Before: McDonald, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Attorney lien claimant Stuart J. Rice appeals as of right from an order dismissing the action. We reverse.

On June 16, 1997, Appellant, an attorney seeking to enforce a lien on a settlement received by plaintiff in the underlying action, failed to appear at a mandatory settlement conference before Judge James S. Thorburn, the facilitator. Although plaintiff's counsel was present, the record indicates that no representative from the plaintiff corporation was present. As a result of appellant's failure to appear, Judge Thorburn recommended dismissal of the action. Upon discovering that he had missed the settlement conference, appellant apologized to plaintiff's counsel and sent a letter to Judge Francis X. O'Brien, the trial judge, indicating that his failure to appear had been inadvertent.

On June 27, 1997, the day scheduled for trial, appellant requested an adjournment on the ground that his attorney was not present. The trial court denied this motion as being untimely. In response to a pretrial motion to dismiss made by plaintiff, appellant explained on the record that his failure to appear at the settlement conference had been inadvertent, and that he subsequently engaged in settlement discussions with plaintiff without success. The trial court then encouraged further settlement

discussions on the record. After plaintiff rejected appellant's best offer, the trial court dismissed the action in part for appellant's failure to appear at the settlement conference, and in part for the fact that appellant was "not ready to proceed and wanted the adjournment." Upon hearing the trial court's ruling, appellant indicated that he was willing to proceed without counsel. This fact did not persuade the trial court to change its ruling.

On appeal, appellant first argues that the trial court erred in imposing the sanction of dismissal. We agree. This Court reviews a trial court's decision to dismiss an action under an abuse of discretion standard. *Vicencio v Ramirez*, 211 Mich App 501, 506; 536 NW2d 280 (1995).

"Our legal system favors disposition of litigation on the merits." *Id.* at 507. Accordingly, dismissal is a drastic step that must be taken cautiously. "Before imposing such a sanction, the trial court is required to carefully evaluate all available options on the record and conclude that the sanction of dismissal is just and proper." *Id.* at 506. In this case, the trial court did not carefully evaluate all available options on the record. Instead, it merely announced that the case was going to be "discontinued" because appellant was not ready to proceed.¹ This fact alone would merit reversal of the order. See *id.* at 506-507.

With regard to appellant's failure to appear at the settlement conference, the record indicates that the sanction of dismissal was too harsh. Because the trial court decided to dismiss the case only after it was first unable to facilitate a settlement itself on the day of trial, plaintiff cannot claim to have been unduly prejudiced by appellant's apparently inadvertent failure to attend the settlement conference. Accordingly, for the reasons stated, we hold that the trial court abused its discretion in dismissing the action.

Because we reverse on the basis of appellant's first argument on appeal, we need not consider his remaining contentions.

Reversed.

/s/ Gary R. McDonald

/s/ Kathleen Jansen

/s/ Michael J. Talbot

¹ Given the fact that appellant was an attorney who indicated that he would be willing to proceed without counsel, consideration of the other available options might well have lead to a timely resolution of the dispute on its merits.